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16 LEDUP ENTERPRISE, INC.

17 **UNITED STATES DISTRICT COURT**  
18 **CENTRAL DISTRICT OF CALIFORNIA**

19 CHAO TAI ELECTRONICS CO.,  
20 LTD, a Taiwanese corporation,

21 Plaintiff,

22 v.

23 LEDUP ENTERPRISE, INC., a  
24 California corporation; LOWE'S HIW,  
25 INC., a Washington Corporation; THE  
26 HOME DEPOT U.S.A., INC., a  
27 Delaware corporation; MARTHA  
28 STEWART LIVING OMNIMEDIA,  
INC., a Delaware corporation; and  
DOES 1 through 10, inclusive,

Defendant.

LEDUP ENTERPRISE, INC., a  
California corporation,

Counterclaimant,

v.

CHAO TAI ELECTRONICS CO.,  
LTD, a Taiwanese corporation,

Counterdefendant

Case No. CV-12-10137-R-MRW

**STIPULATION AND [PROPOSED]  
ORDER REGARDING THE  
EXCHANGE OF CONFIDENTIAL  
MATERIALS**

**JURY TRIAL DEMANDED**

1           WHEREAS, the Parties to the above-captioned action (“this Action”) or third  
 2 parties may, in the course of the litigation of this Action be asked or required to  
 3 have possession of each other’s trade secrets and other confidential or sensitive  
 4 commercial, research, technical, manufacturing, marketing, or business information  
 5 or other confidential information within the meaning of Rule 26(c) of the Federal  
 6 Rules of Civil Procedure; and

7           WHEREAS, good cause exists for the issuance of this Order Regarding the  
 8 Exchange of Confidential Material (“Protective Order”) and such issuance would be  
 9 in the furtherance of justice because, among other things: (i) the issuance of this  
 10 Protective Order will allow for efficiency in the discovery process; (ii) discovery  
 11 obtained in the Action may involve disclosure of nonpublic, confidential,  
 12 proprietary, commercially sensitive and/or trade secret or otherwise privileged  
 13 information, including but not limited to the structure, design and operation of  
 14 Parties’ products, Parties’ relations with their authorized dealers, Parties’ business  
 15 plans, models, marketing analyses, sales and financial statements; (iii) disclosure of  
 16 this information to persons who are not entitled to such information carries the  
 17 danger of compromising the competitive business interests of the Parties, who in  
 18 turn, compete directly with one another in the same line(s) of business; and (iv)  
 19 discovery obtained in the Action also may involve disclosure of documents  
 20 containing private information, including financial information and social security  
 21 numbers, of individual persons, including both parties and non-parties, the  
 22 disclosure of which may invade their legitimate personal privacy interests; and

23           WHEREAS, the parties have, through counsel, stipulated to entry of this  
 24 Protective Order pursuant to Federal Rule of Civil Procedure 26(c) to prevent  
 25 unnecessary disclosure or dissemination of such confidential information; and

26           WHEREAS, the Court having considered this matter upon a noticed Motion  
 27 for Protective Order pursuant Rule 26(c) of the Federal Rules of Civil Procedure,

1 and having considered the papers submitted by the parties in support thereof and  
2 having given interested parties a reasonable opportunity to object;

3       NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by  
4 and among the parties, by and through their respective attorneys of record in this  
5 Action, that the terms and conditions of this Protective Order shall govern (a) initial  
6 and supplemental disclosures, (b) the production, inspection, and handling of  
7 documents, materials, and things, (c) answers to interrogatories, (d) responses to  
8 requests for admission, (e) depositions, (f) pleadings, declarations or affidavits, and  
9 exhibits, and (g) other information exchanged by the parties, or received from third  
10 parties in this Action.

11       IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

12       **1. PURPOSES AND LIMITATIONS**

13       (a) This Order shall govern the production, use, and disclosure of  
14 confidential documents and information produced, used, or disclosed in connection  
15 with this Action, and designated in accordance with this Protective Order.

16       (b) Disclosure of Protected Material (as defined below) is prohibited,  
17 except as expressly provided in this Protective Order.

18       (c) The Parties (as defined below) acknowledge that designations under  
19 this Protective Order shall be made with care and with the good faith belief that the  
20 designated material satisfies the criteria set forth below. If a Producing Party  
21 discovers that designated material does not qualify for the level of protection  
22 initially asserted, it must promptly notify any Receiving Party (defined below) that it  
23 is withdrawing or changing the designation.

24       (d) A Party may designate information or documents produced, used or  
25 disclosed as “CONFIDENTIAL” and subject to the protections and requirements of  
26 this Protective Order, if so designated in writing to the other Parties, or orally, if  
27 recorded as part of a deposition or court proceeding, pursuant to the terms of this

1 Protective Order.

2       (e) The Parties acknowledge that this Protective Order does not confer  
3 blanket protection on all disclosures or responses to discovery and that the  
4 protection it affords from public disclosure and use extends only to the limited  
5 information or items that are entitled to confidential treatment under the applicable  
6 legal principals.

7       (f) The Parties further acknowledge, as set forth in Section 11 below, that  
8 this Protective Order does not entitle them to file confidential information under  
9 seal, and the standards set forth in the Local Rules will be applied when a party  
10 seeks permission from the court to file material under seal.

11      **2. DEFINITIONS**

12       (a) **Challenging Party** means a Party that challenges the designation of  
13 information or items under this Order.

14       (b) **Designating Party** means a Party, Non-Party, or Third Party that  
15 designates information or items that it produces in disclosures or in responses to  
16 discovery as “CONFIDENTIAL.”

17       (c) **Discovery Material** means all items or information, including from a  
18 third party, regardless of the medium or manner in which it is generated, stored, or  
19 maintained (including, among other things, testimony, transcripts, or tangible  
20 things) that are produced or generated in connection with discovery or Federal Rule  
21 of Civil Procedure 26(a) in this Action.

22       (d) **In-House Counsel** means an attorney who is licensed in any state of  
23 the United States and who is an employee of a Party.

24       (e) **Non-Party or Third Party** means any natural person, partnership,  
25 corporation, association, or other legal entity not named as a Party to this Action. A  
26 third party producing information or material voluntarily or pursuant to a subpoena  
27 or a court order may designate such material or information in the same manner and

1 shall receive the same level or protection under this Protective Order as any Party to  
 2 this Action. A third party's use of this Protective Order to protect its Protected  
 3 Material does not entitle that third party to gain access to Protected Material  
 4 produced by any Party or other third party in this Action.

5 (f) **Outside Counsel** means attorneys licensed in any state of the United  
 6 States who are not employees of a Party to this action but are retained to represent or  
 7 advise a party to this action and have appeared in this action on behalf of that party  
 8 or are affiliated, as an attorney licensed in any state of the United States, with a law  
 9 firm which has appeared on behalf of that party.

10 (g) **Party** means any party to this Action, including its officers, directors,  
 11 employees, consultants, retained experts, and Outside Counsel and their support  
 12 staff.

13 (h) **"Patent-in-Suit"** means any patent asserted in this Action, including  
 14 U.S. Patent No. 7,301,287, and any U.S. patents, reissues, reexaminations, post-  
 15 grant reviews, or patent applications (including provisionals, continuations,  
 16 continuations-in-part, divisionals, or international counterparts) providing priority  
 17 for or claiming priority (in whole or in part) to or through U.S. Patent No. 7,301,287  
 18 or any other patent asserted in this Action.

19 (i) **Producing Party** means any Party that discloses or produces  
 20 Discovery Material in this Action.

21 (j) **Protected Material** means any Discovery Material that is designated  
 22 as "CONFIDENTIAL" as provided in this Protective Order. Protected Material  
 23 shall not include: (1) materials that have been published to the general public or are  
 24 otherwise in the public domain; (2) information that after disclosure to a Receiving  
 25 Party becomes part of the public domain as a result of publication not involving a  
 26 violation of this Protective Order or any violation of law; (3) information that a  
 27 Receiving Party can show was received by it, whether before or after the disclosure,

1 from a source that obtained the information lawfully and under no obligation of  
 2 confidentiality; (4) information that a Receiving Party can show was independently  
 3 developed by it after the time of disclosure by personnel who have not had access to  
 4 the information designated by a Producing Party under this Protective Order; or (5)  
 5 documents or testimony for which confidentiality was waived by the Producing  
 6 Party's purposeful use in open court or any non-confidential filing in connection  
 7 with the appeal of the judgment rendered in this Action.

8       (k) **Receiving Party** means any Party that receives Discovery Material  
 9 from a Producing Party.

10      **3. SCOPE**

11       (a) The protection conferred by this Protective Order covers not only  
 12 Protected Material (as defined above), but also (1) any information copied or  
 13 extracted from Protected Material; (2) all copies, excerpts, summaries, notes, or  
 14 compilations of Protected Material; and (3) any testimony, conversations, or  
 15 presentations by Parties or their Counsel in court or other settings that might reveal  
 16 Protected Material. However, the scope of this Protective Order is specifically  
 17 limited to any of the above-described information that is produced or adduced (e.g.,  
 18 deposition testimony) during discovery in this litigation.

19       (b) Nothing in this Protective Order restricts a Producing Party's disclosure  
 20 or use of its own Protected Material for any purpose, and nothing in this Protective  
 21 Order precludes any Party from disclosing Protected Material to the individual who  
 22 prepared or previously received the Protected Material. Nothing in this Protective  
 23 Order shall be construed to prejudice any Party's right to use any Protected Material  
 24 in court and in any court filing with the consent of the Producing Party or by order  
 25 of the Court, and in accordance with the terms herein.

26       (c) This Protective Order is without prejudice to the right of any Party to  
 27 seek additional protection for any Discovery Material or to modify this Protective

1 Order in any way, including, without limitation, seeking an order that certain matter  
 2 need not be produced at all.

3       (d) Any use of Protected Material at trial shall be governed by a separate  
 4 agreement or order.

5       **4. DURATION**

6       Even after final disposition of this litigation, the confidentiality obligations  
 7 imposed by this Order shall remain in effect until a Designating Party agrees  
 8 otherwise in writing or a court order otherwise directs. Final disposition shall be  
 9 deemed to be the later of (1) dismissal of all claims and defenses in this action, with  
 10 or without prejudice, and (2) final judgment herein after the completion and  
 11 exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,  
 12 including the time limits for filing any motions or applications for extension of time  
 13 pursuant to applicable law.

14       **5. ACCESS TO AND USE OF PROTECTED MATERIAL**

15       (a) **Basic Principles.** All Protected Material may be used solely for this  
 16 litigation and the preparation for and trial in this Action and any related appellate  
 17 proceeding, and not for any other purpose whatsoever, including without limitation  
 18 any other litigation, patent prosecution or acquisition, or any business or competitive  
 19 purpose or function. Protected Material may not be distributed, disclosed, or made  
 20 available to anyone except as expressly provided in this Protective Order.

21               (i) Protected Material, including any notes or other documents  
 22 discussing, describing or otherwise containing or concerning Protected  
 23 Material, will only be reviewed in the United States;

24               (ii) Protected Material, including any notes or other documents  
 25 discussing, describing or otherwise containing or concerning Protected  
 26 Material, will not be shipped or transported outside of the United States; and

27               (iii) No remote access to any Protected Material, including any notes

1 or other documents discussing, describing or otherwise containing or  
 2 concerning Protected Material, will be provided or permitted to a person at  
 3 the time while physically located outside of the United States.

4 (b) **Limitations.** Nothing in this Protective Order restricts in any way a  
 5 Producing Party's use or disclosure of its own Protected Material. Nothing in this  
 6 Protective Order restricts in any way a Receiving Party's use or disclosure of  
 7 Discovery Material: (1) that is or has become publicly known through no fault of the  
 8 Receiving Party; (2) that is lawfully acquired by or known to the Receiving Party  
 9 independent of the Producing Party; (3) that the Producing Party previously  
 10 produced, disclosed, or provided to the Receiving Party or a non-Party without any  
 11 obligation of confidentiality and not inadvertently or by mistake; (4) with the  
 12 consent of the Producing Party; or (5) pursuant to order or the Court.

13 **6. DESIGNATING PROTECTED MATERIAL**

14 (a) **Exercise of Restraint in Designating Material for Protection.** Each  
 15 Party or Non-Party that designates information or items for protection under this  
 16 Protective Order must take care to limit any such designation to specific material  
 17 that qualifies under the appropriate standards. To the extent it is practical to do so,  
 18 the Designating Party must designate for protection only those parts of material,  
 19 documents, items, or oral or written communications that qualify so that other  
 20 portions of the material, documents, items, or communications for which protection  
 21 is not warranted are not swept unjustifiably within the ambit of this Protective  
 22 Order. Mass, indiscriminate, or routinized designations are prohibited.  
 23 Designations that are shown to be clearly unjustified or that have been made for an  
 24 improper purpose (e.g., to unnecessarily encumber or retard the case development  
 25 process or to impose unnecessary expenses and burdens on other parties) expose the  
 26 Designating Party to sanctions. If it comes to a Designating Party's attention that  
 27 information or items that it designated for protection do not qualify for protection at

1 all or do not qualify for the level of protection initially asserted, that Designating  
 2 Party must promptly notify all other parties that it is withdrawing the mistaken  
 3 designation.

4       (b) **Available Designations.** Any Producing Party may designate  
 5 Discovery Material with the designation as “CONFIDENTIAL,” provided that it  
 6 meets the requirements for such designation as provided for herein.

7       (c) **Written Discovery and Documents and Tangible Things.** Written  
 8 discovery, documents, and tangible things that meet the requirements for the  
 9 confidentiality designations listed in Paragraphs 7 and 8 below may be so designated  
 10 by placing the appropriate designation on the written material prior to production or  
 11 disclosure. Information or material produced digitally, e.g., on a magnetic or optical  
 12 medium or by network communication, is to be designated as Protected Material by  
 13 marking the medium, container, or communication through a naming convention for  
 14 the electronically stored information (“ESI”), or by other means that indicate the  
 15 confidential nature of the material. In addition, with respect to digital image files,  
 16 such as TIFF files, the Producing Party shall use its best efforts to mark each  
 17 viewable page or image with the appropriate designation. Native documents and  
 18 databases will be marked by the Producing Party using a naming convention that  
 19 conveys its confidentiality status, or some other appropriate means to communicate  
 20 the confidential nature of the ESI that is agreed upon by the parties. If any  
 21 Receiving Party prints or otherwise copies digitally produced Protected Material that  
 22 the Producing Party did not mark pursuant to the preceding sentence, the Receiving  
 23 Party shall mark such copies with the designation corresponding to the medium,  
 24 container, or communication. If original documents are provided for inspection, the  
 25 original documents shall be presumed to be “CONFIDENTIAL” during the  
 26 inspection and re-designated, as appropriate, during the copying process.

27       (d) **Depositions and Testimony.** Parties or testifying persons or entities  
 28

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1 may designate depositions and other testimony with the appropriate designation  
2 under this Protective Order by indicating on the record at the time the testimony is  
3 given or by sending written notice to the court reporter, counsel for the parties, and  
4 any other person known to be in possession of the transcript that the testimony is so  
5 designated within fifteen (15) calendar days of receipt of the official transcript of the  
6 testimony. Transcripts (including exhibits) containing Protected Material shall have  
7 an obvious legend on the title page that the transcript contains Protected Material,  
8 and the title page shall be followed by a list of all pages (including lines numbers  
9 and exhibit numbers as appropriate) that have been designated as Protected Material  
10 and the level of protection being asserted by the Designating Party. All information  
11 disclosed during a deposition shall be deemed "CONFIDENTIAL" until those  
12 fifteen (15) calendar days have passed. Any designated Discovery Material used in  
13 the taking of a deposition shall remain subject to the provisions of this Order, along  
14 with the transcript pages of the deposition testimony dealing with such Discovery  
15 Material. In such cases, the court reporter shall be informed of this Protective Order  
16 and be required to act consistently with this Protective Order. If the deposition is  
17 videotaped, the video technician shall mark the original and all copies of the  
18 videotape to indicate that the contents of the videotape are subject to this Protective  
19 Order, substantially along the lines of "This videotape contains confidential  
20 testimony used in this case. Its contents may not be viewed, displayed, or revealed  
21 except by order of the Court or pursuant to written stipulation of the  
22 Parties." Counsel for any Producing Party shall have the right to exclude from oral  
23 depositions, other than the deponent, deponent's counsel, the reporter, and  
24 videographer (if any), any person who is not authorized by this Order to receive  
25 Protected Material based on the designation of such Protected Material. Such right  
26 of exclusion shall be applicable only during periods of examination or testimony  
27 regarding such Protected Material. Parties shall give the other parties notice if they

1 reasonably expect a deposition to include Protected Material so that the other parties  
 2 can ensure that only authorized individuals who have signed the “Acknowledgment  
 3 and Agreement to Be Bound” (Exhibit A) are present at those depositions. The use  
 4 of a document as an exhibit at a deposition shall not in any way affect its  
 5 designation as “CONFIDENTIAL.”

6         (e) **Inadvertent Failures to Designate.** If timely corrected, an inadvertent  
 7 failure to designate qualified information or items does not, standing alone, waive  
 8 the Designating Party’s right to secure protection under this Order for such material.  
 9 Upon timely correction of a designation, the Receiving Party must make reasonable  
 10 efforts to assure that the material is treated in accordance with the provisions of this  
 11 Protective Order.

12         7. **DISCOVERY MATERIAL DESIGNATED AS**  
**“CONFIDENTIAL”**

13         (a) A Producing Party may designate Discovery Material as  
 14 “CONFIDENTIAL” if it contains or reflects confidential, proprietary, or  
 15 commercially sensitive information that is not generally available to or accessible by  
 16 the general public.

17         (b) Discovery Material designated as “CONFIDENTIAL” may be  
 18 disclosed only to the following persons:

19                 (i) The Receiving Party’s outside counsel and litigation counsel of  
 20 record in this Action, and the supporting personnel employed in or by such  
 21 counsel, including staff, paralegals, advisors, commercial copying vendors,  
 22 data processing vendors, e-discovery vendors, and/or database services  
 23 providers;

24                 (ii) Unless otherwise agreed by the Producing Party and the  
 25 Receiving Party, in addition to the persons granted access under section  
 26 7(b)(i) above, one (1) designated In-House Counsel for each Receiving Party

1 to whom it is necessary to disclose the information to this litigation may have  
 2 access to information marked "CONFIDENTIAL," provided that: (a) such  
 3 person is not engaged in competitive decision-making for the Receiving  
 4 Party, including pricing, negotiation, and contracting, (b) such person has  
 5 signed the acknowledgement form annexed hereto as Exhibit A agreeing to be  
 6 bound by the terms of this Protective Order, (c) the Receiving Party has  
 7 provided a copy of the signed Exhibit A acknowledgement form to the  
 8 Producing Party at least two (2) business days prior to disclosing any  
 9 "CONFIDENTIAL" information to such identified In-House Counsel, and (d)  
 10 no unresolved objections to such disclosure exist after the notice above has  
 11 been provided to the Producing Party;

12 (iii) Any testifying expert or non-testifying consultant who is retained  
 13 by the Receiving Party to assist in this Action, provided that disclosure is only  
 14 to the extent necessary to perform such work, and provided that: (a) such  
 15 person has signed the acknowledgement form annexed hereto as Exhibit A  
 16 agreeing to be bound by the terms of this Protective Order, and (b) no  
 17 unresolved objections to such disclosure exist after proper notice has been  
 18 given to all parties as set forth in Paragraph 8(b) below;

19 (iv) Court reporters, stenographers, and videographers retained to  
 20 record testimony taken in this Action;

21 (v) The Court, jury, and court personnel;

22 (vi) Graphics, translation, design, or trial consulting services  
 23 (including mock jurors) retained by a Party;

24 (vii) Any other person with the prior written consent of the Producing  
 25 Party; and

26 (viii) Any mediator or settlement officer who is assigned to hear this  
 27 matter, and his or her staff.

1           (c) Any “CONFIDENTIAL” materials obtained by any Party from any  
2 Producing Party pursuant to discovery in this Action may only be used for purposes  
3 of preparation and litigation of this case, and for no other purpose.

## **8. INDEPENDENT EXPERTS AND CONSULTANTS**

5       (a) Experts or consultants receiving Protected Material may not be a  
6 current officer, director, or employee of a Party or of a competitor of the Producing  
7 Party, and may not anticipate at the time of retention or during engagement for this  
8 litigation becoming an officer, director, or employee of a Party or of a competitor of  
9 the Producing Party.

10       (b) Before disclosing any Protected Material to a testifying expert or non-  
11 testifying consultant, the Party seeking to disclose such information shall provide  
12 the Producing Party or Parties with written notice that includes: (i) the person's  
13 name; (ii) the person's present employer and title; (iii) the person's up-to-date  
14 curriculum vitae; (iv) a list of the cases in which the person has testified at  
15 deposition or trial and all companies with which the individual has consulted or by  
16 which the individual has been employed for the past five (5) years; and (v) any  
17 previous or current relationship (personal or professional) with any of the Parties.

18       (c) After the Party seeking to disclose such information to the proposed  
19 testifying expert or non-testifying consultant has provided written notice to the  
20 Producing Party or Parties, the Party seeking to disclose such information to the  
21 proposed testifying expert or non-testifying consultant shall wait to disclose the  
22 Protected Material until five (5) calendar days after the written notice has been  
23 provided.

24 (d) Before receiving Protected Material under this Order, the proposed  
25 testifying expert or non-testifying consultant shall execute a copy of the  
26 acknowledgement form annexed hereto as Exhibit A.

1           **9. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

2           (a) **Timing of Challenges.** Any Party may challenge a designation of  
 3 confidentiality at any time. Unless a prompt challenge to a Designating Party's  
 4 confidentiality designation is necessary to avoid foreseeable, substantial unfairness,  
 5 unnecessary economic burdens, or a significant disruption or delay of the litigation,  
 6 a Party does not waive its right to challenge a confidentiality designation by electing  
 7 not to mount a challenge promptly after the original designation is disclosed.

8           (b) **Meet and Confer.** Any challenge to a designation of Discovery  
 9 Material under this Protective Order must be in writing, served on outside counsel  
 10 for the Producing Party, and specifically identify the documents or information that  
 11 the Receiving Party contends should be differently designated and the grounds for  
 12 the objection. Thereafter, further protection or such material shall be resolved in  
 13 accordance with the following procedures:

14           (i) The objecting Party shall bear the burden of conferring in person,  
 15 in writing, or by telephone with the Producing Party claiming protection (as  
 16 well as any other interested Party) in a good faith effort to resolve the dispute.  
 17 The Designating Party shall provide its rationale for maintaining the disputed  
 18 designation;

19           (ii) Failing agreement, the objecting Party may move the Court for a  
 20 ruling that the Discovery Material in question is improperly designated. The  
 21 Parties' agreement to this Order shall not preclude or prejudice any Party  
 22 from arguing for or against any designation, establish any presumption that a  
 23 particular designation is valid, or alter the burden of proof that would  
 24 otherwise apply in a dispute over discovery or disclosure of information; and

25           (iii) Notwithstanding any challenge to a designation, the Discovery  
 26 Material in question shall continue to be treated as designated under this  
 27 Order until one of the following occurs: (a) the Party who designated the

1           Discovery Material in question withdraws the contested designation in  
 2 writing; or (b) the Court rules that the Discovery Material in question is not  
 3 entitled to the designation.

4           **10. SUBPOENAS OR COURT ORDERS**

5           If at any time Protected Material is subpoenaed by any court, arbitral,  
 6 administrative, or legislative body, the person to whom the subpoena or other  
 7 request is directed shall immediately give written notice thereof to the Producing  
 8 Party and its counsel and shall provide each such Party with an opportunity to move  
 9 for a protective order regarding the production of confidential materials before any  
 10 disclosure thereof by the recipient of the subpoena or court order.

11           **11. INADVERTENT DISCLOSURE OF PRIVILEGED MATERIAL**

12           (a) Nothing in this Protective Order shall require production of information  
 13 that a party contends is protected from disclosure by the attorney-client privilege,  
 14 the work product immunity or other lawful privilege, doctrine, right, or immunity.  
 15 If information subject to a claim of attorney-client privilege, work-product  
 16 immunity, or other privilege, doctrine, right, or immunity is nevertheless  
 17 inadvertently or unintentionally produced, such production shall in no way prejudice  
 18 or otherwise constitute a waiver or estoppel as to any such privilege, doctrine, right,  
 19 or immunity.

20           (b) Pursuant to Rule 502 of the Federal Rules of Evidence and Rule  
 21 26(b)(5)(B) of the Federal Rules of Civil Procedure, the inadvertent disclosure of  
 22 protected communications or information (“Privileged Material”) shall not  
 23 constitute a waiver of any privilege or other protection (including work product) for  
 24 the Privileged Material or the subject matter of the Privileged Material if the  
 25 Producing Party took reasonable steps to prevent disclosure and also took  
 26 reasonable steps to rectify the error in the event of an inadvertent disclosure. The  
 27 Producing Party will be deemed to have taken reasonable steps to prevent Privileged

1 Material from inadvertent disclosure if the Producing Party utilized attorney review,  
 2 keyword search term screening, and/or linguistic tools in screening for privilege,  
 3 work product or other protection.

4           (c) In the event of the inadvertent disclosure of Privileged Material, the  
 5 Producing Party shall be deemed to have taken reasonable steps to rectify the error  
 6 of the disclosure if, within ten (10) calendar days from the date that the inadvertent  
 7 disclosure has been realized, the Producing Party notifies the Receiving Party of the  
 8 inadvertent disclosure and instructs the Receiving Party to destroy or return  
 9 promptly all copies of the inadvertently produced Privileged Material (including any  
 10 and all work product containing such communications or information).

11           (d) Upon receiving such a request from the Producing Party, the Receiving  
 12 Party shall promptly return or confirm destruction of all copies of such inadvertently  
 13 produced Privileged Material (including any and all work product containing such  
 14 communications or information), and shall make no further use of such Privileged  
 15 Material (or work product containing such Privileged Material). Nothing herein  
 16 shall prevent the Receiving Party from challenging the propriety of the attorney-  
 17 client, work product, or other designation of protection. The protections against  
 18 waiver afforded by this Protective Order shall be applicable to the fullest extent  
 19 allowed by Rule 502 of the Federal Rules of Evidence against both Parties and non-  
 20 parties to this action and in other proceedings in Federal and State courts.

21           (e) Notwithstanding this provision, litigation counsel of record are not  
 22 required to delete information that may reside on their respective firm's electronic  
 23 back-up systems or a vendor(s)' systems that are over-written in the normal course  
 24 of business.

25           **12. INADVERTENT FAILURE TO DESIGNATE**

26           (a) A Producing Party's inadvertent failure to designate Discovery  
 27 Material as Protected Material under this Protective Order shall not waive its rights

1 to subsequently make an appropriate designation, provided that the Producing Party  
 2 notifies the Receiving Party of the correct designation within ten (10) days of  
 3 learning of its inadvertent failure to so designate.

4       (b) A Receiving Party's use of such Discovery Material before receiving  
 5 notice of the inadvertent failure to designate shall not constitute a violation of this  
 6 Order. Upon receiving such notice, the Receiving Party shall treat such Discovery  
 7 Material according to its designation under this Order. In the event the document  
 8 has been distributed in a manner inconsistent with this designation, a Receiving  
 9 Party will take the steps necessary to conform distribution to the designation, i.e.,  
 10 returning all copies in its possession of the "CONFIDENTIAL" or notes or extracts  
 11 thereof, to the persons authorized to possess such documents. In the event  
 12 distribution has occurred to a person not under the control of a Receiving Party, a  
 13 request for return of the document, and for an undertaking of confidentiality, shall  
 14 be made in writing. In the event the request is not promptly agreed to in writing, or  
 15 in the event there is no response, or in the event that the Party deems the making of  
 16 the request to be a futile act, the Party shall promptly notify the Producing Party of  
 17 the distribution and all pertinent facts concerning it, including the identity of the  
 18 person or entity not under the control of the Receiving Party.

19       **13. INADVERTENT DISCLOSURE NOT AUTHORIZED BY**  
 20       **ORDER**

21       (a) If Discovery Material protected by this Protective Order is disclosed to  
 22 any person not authorized to receive such disclosure under this Protective Order, the  
 23 Party responsible for such disclosure shall immediately notify counsel for the  
 24 Producing Party of all known relevant information concerning the nature and  
 25 circumstances of the unauthorized disclosure. The responsible disclosing Party shall  
 26 promptly take all reasonable measures to retrieve the improperly disclosed

1 Discovery Material and to ensure that no further unauthorized disclosure or use is  
2 made or the material.

3       (b) Unauthorized or inadvertent disclosure does not change the status of  
4 Discovery Material or waive the Producing Party's right to claim that the disclosed  
5 document or information still constitutes Protected Material.

6       **14. FINAL DISPOSITION**

7       (a) Within sixty (60) days after the final disposition of this Action,  
8 including all appeals therefrom, each Party and all third parties who obtained access  
9 to confidential information under this Protective Order shall either return all  
10 Discovery Material of a Producing Party to the respective outside counsel of the  
11 Producing Party or destroy it at the option of the Producing Party.

12       (b) Within sixty (60) days after the final disposition of this litigation  
13 (including after any appeals), all Parties and third parties that have received any  
14 such Discovery Material shall certify in writing that all such materials have been  
15 returned to the respective outside counsel of the Producing Party or destroyed.

16       (c) Notwithstanding the provisions for the return and destruction of  
17 Discovery Material, litigation counsel of record in this Action may retain pleadings,  
18 correspondence, and attorney and consultant work product (but not production)  
19 subject to the "CONFIDENTIAL" designation for archival purposes. Litigation  
20 counsel of record are not required to delete information that may reside on their  
21 respective firms electronic back-up systems or vendor systems that are over-written  
22 in the normal course of business.

23       **15. FILING PROTECTED MATERIAL**

24       In the event that counsel for any party desires to file with the Court any  
25 document which includes any Protected Material, the such document shall be filed  
26 separately in a sealed envelope and include a written application and proposed order  
27 in conformity with Central District of California Local Rule 79-5.1. If the Party

1 making the filing is a Receiving Party, then the written application shall state that  
 2 the documents sought to be sealed are subject to the Court's Protective Order and  
 3 that pursuant to that Order, the Designating Party shall have seven days to file with  
 4 the Court supporting documents necessary to make a factual showing establishing  
 5 that the Protected Material is sealable, and that the Court should therefore abstain  
 6 from making a ruling on the Written Application to provide the Designating Party  
 7 with sufficient opportunity to make this showing. The Receiving Party should then  
 8 provide written email notification to the Designating Party on the date of filing of  
 9 the bates-ranges and title of the Protected Material to be filed under seal so as to  
 10 give the Designating Party sufficient opportunity to make its factual showing.

11       **16. MISCELLANEOUS**

12       (a) **Retention of Declarations.** The attorneys or record for the Receiving  
 13 Party shall retain the original, executed Declarations (in the form or Exhibit A) that  
 14 have been executed by the Receiving Party's employees, consultants, and testifying  
 15 experts.

16       (b) **Right to Further Relief.** Nothing in this Order abridges any person's  
 17 right to seek its modification by the Court in the future. By stipulating to this  
 18 Protective Order, the Parties do not waive their right to argue that certain material  
 19 may require additional or different confidentiality protections than those set forth  
 20 herein.

21       (c) **Documents in Prior Possession of Receiving Party.** The  
 22 confidentiality obligations of this Order shall not prohibit any use whatsoever by  
 23 any Receiving Party of any information or documents that were, at the time of  
 24 production to the Receiving Party, currently in the Receiving Party's lawful  
 25 possession, custody, or control without any obligations of confidentiality to the  
 26 Producing Party under this Order or otherwise, or that later come into the possession  
 27 of the party from others lawfully in possession of such information or documents

1 who are not parties to the lawsuit or bound by this Order or any other confidentiality  
2 obligation to the Producing Party.

3       (d) **Termination of Litigation and Retention of Jurisdiction.** The  
4 Parties agree that the terms of this Protective Order shall survive and remain in  
5 effect after the termination of the above-captioned matter. The Court shall retain  
6 jurisdiction after termination of this matter to hear and resolve any disputes arising  
7 out of this Protective Order.

(g) **Violation of Protective Order.** In the event that anyone violates or threatens to violate the terms of this Protective Order, the parties agree that the aggrieved Party may apply immediately to obtain injunctive relief against any such violation or threatened violation and, in the event the aggrieved Party shall do so, the respondent, subject to the provisions of this Protective Order, shall not employ as a defense thereto any claim that the aggrieved Party possesses an adequate remedy at law.

(h) **Successors.** This Protective Order shall be binding upon the Parties hereto, their attorneys, and their successors, executors, personal representatives, administrators, heirs, legal representatives, assigns, subsidiaries, divisions, employees, agents, and consultants and experts retained in this case.

(i) **Right to Assert Other Objections.** By stipulating to the entry of this Protective Order, no Party waives any right it otherwise would have to object to disclosing or producing any information or item. Similarly, no Party waives any objection to the use in evidence of any of the material covered by this Protective Order. This Protective Order shall not constitute a waiver of any Party's right to claim that any Discovery Material, or any portion thereof, is privileged or otherwise not discoverable or is not admissible in evidence in this Action or any other proceeding.

(j) **Burdens of Proof.** Notwithstanding anything to the contrary above, nothing in this Protective Order shall be construed to change the burdens of proof or legal standards applicable in disputes regarding whether particular Discovery Material is confidential, which level of confidentiality is appropriate, whether disclosure should be restricted, and if so, what restrictions should apply.

(k) **Copies of Protected Material.** Except where otherwise specified, nothing in this Protective Order shall restrict a qualified recipient from making working copies, abstracts, digests, and analyses of Protected Material for use in

1 connection with this Action, and such working copies, abstracts, digests, and  
 2 analyses shall have the same protection as the original material under the terms of  
 3 this Protective Order. Further, except where otherwise specified, nothing in this  
 4 Protective Order shall restrict a qualified recipient from converting or translating  
 5 Protected Material into machine readable form for incorporation into a data retrieval  
 6 system used in connection with this Action, provided that access to such  
 7 information, in whatever form stored or reproduced, shall be limited to qualified  
 8 recipients under the terms of this Protective Order.

9           (l)    **Modification by Court.** This Protective Order is subject to further  
 10 court order based upon public policy or other considerations, and the Court may  
 11 modify this Order *sua sponte* in the interests of justice.

12           (m)    **Jurisdiction.** Each person receiving Protective Material under the  
 13 terms of this Protective Order hereby agrees to subject himself or herself to the  
 14 jurisdiction of this Court for purposes of any proceedings relating to the  
 15 performance under, compliance with, or violation of this Protective Order.

16           (n)    **No Admissions.** Compliance with this Protective Order in no way  
 17 constitutes an admission by any Party that any information designated pursuant to  
 18 this Protective Order is or is not proprietary, confidential, or a trade secret.

19           (o)    **Waiver of Notice.** Any of the notice requirements herein may be  
 20 waived, in whole or in part, but only by a writing signed by the attorney of record  
 21 for the Party against whom such waiver will be effective.

22           **17. TREATMENT OF PARTY OF THIRD-PARTY'S OWN**  
 23           **INFORMATION OR ANALYSIS OF OWN INFORMATION**

24           Nothing herein shall restrict a Party with respect to the treatment and handling  
 25 of its own information or of any derivatives, abstracts, briefs, memoranda, reports,  
 26 analyses, summaries, characterizations or testimony that refer to a Party's own  
 27 information. For example, nothing herein shall restrict a Party from having access

1 to designated materials that it produced in discovery or from having access to  
2 portions of any derivatives, abstracts, briefs, memoranda, reports, analyses,  
3 summaries, characterizations or testimony that refer to the designated materials that  
4 the Party has produced in discovery. A Party shall be permitted to have access to  
5 portions of any expert reports, testimony or court filings that address the Party's  
6 own designated materials. Similarly, nothing herein shall restrict a Party from  
7 sharing with a third-party information that is from or belongs to that third-party. For  
8 example, a Party may share designated materials with a third-party that belongs to  
9 that third-party. The Parties agree to abide by and be bound by the terms or this  
10 Protective Order upon signature hereof as if the Protective Order had been entered  
11 on that date.

12 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

13 DATED: December 2, 2013 By J. Mark Smith / JJK  
14 J. Mark Smith (*Pro Hac Vice*)

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1  
2  
3  
4 DATED: December 2, 2013 By Gary F. Wang / JJK  
5 Gary F. Wang, Esq.

6 Franklin Eugene Gibbs, Esq.  
7 Law Offices of Gary F. Wang  
8 Attorneys for Plaintiff Chao Tai Electronics Co., LTD.

9  
10  
11  
12 DATED: December 2, 2013 By: JK C  
13 Phillip J. Eskenazi, Esq.  
14 Jason Kim, Esq.

15  
16 Hunton & Williams, LLP  
17 Attorneys for Defendant Lowe's HIW, Inc.

## **[PROPOSED] ORDER**

Based on the foregoing stipulation of the Parties, and Good Cause having been shown,

IT IS SO ORDERED.

Dated:

Michael R. Wilner  
United States Magistrate Judge

**PAYNE & FEARS LLP**  
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**STIPULATION AND [PROPOSED] ORDER  
REGARDING THE EXCHANGE OF CONFIDENTIAL MATERIAL**